de-control of the premises under s 23(2) of the Control of Rent Act 1966 (exh L6, encl 114). The certificate stated that the premises were vacated on 3 September 1985 and 'the premises No 116 Burmah Road, Penang shall forthwith cease to be controlled under s 23(2) of the Control of Rent Act 1966'. The certificate was dated 23 November 1985.

Under the agreement the defendant had agreed to purchase the land in question at the price of $999,000. But later as evidenced in the letter dated 19 May 1987 (exh L7, encl 14), the defendant had requested for the purchase price to be reduced to $600,000. He did not want to pay the price he had earlier agreed to.

I believe that the agreements terminating the tenancies and the management agreement dated 17 September 1984 were all executed by the plaintiffs in contemplation of the execution of the agreement. The plaintiffs had suffered loss and damage. The Happy Hotel & Bar business was closed. I also believe that the defendant had applied and obtained the certificate under the Rent Control Act 1966 and I accept as true the statement in the certificate that the premises had been vacated on 3 September 1985 and was vacant at the time the certificate was granted. The plaintiffs were able to deliver vacant possession on the new completion date, 4 May 1986.

I find that in the circumstances of the case damages would not be an adequate remedy to the plaintiffs. I find that the defendant had not raised any triable issue in the action. I therefore gave judgment with costs to the plaintiffs in terms of the minutes of the judgment filed, namely, that the agreement dated 10 November 1984 made between the plaintiffs of the one part and the defendant of the other part mentioned in the writ of summons be specifically enforced and carried into execution:

> And the defendant do pay the plaintiffs the balance of the purchase price amounting to $599,100 when the plaintiffs will then execute a conveyance of the property known as Holding No 329, TS 15, North-East District, Penang with premises No 116, Burmah Road, Penang thereon to the defendant.
>
> And the plaintiffs thereafter will give the defendant vacant possession of the said property.

Consequently I dismissed the defendant's application with costs.

Application dismissed.

Solicitors: *Presgrave & Matthews*; *Cheong Wai Meng & Van Buerle.*

Reported by *Ng Sheau Jiuan*

Shin Min Daily News (M) Sdn Bhd v Tan Chong Hin

HIGH COURT (PENANG) – CIVIL SUIT NO 16-4-1987
WAN ADNAN J
26 JANUARY 1989

Labour Law – Transfer of respondent from Penang to Kuala Lumpur – Non-acceptance of transfer by respondent – Respondent's service terminated – Complaint made to Pegawai Buruh – Pegawai Buruh ordered termination benefits to be paid to respondent – Whether Pegawai Buruh acted without jurisdiction in adjudicating on respondent's dismissal – What actual findings of Pegawai Buruh were – Employment Act 1965, ss 12(3) & 69

The respondent was employed by the appellant as a confidential clerk at the appellant's branch office in Penang. The appellant wanted to transfer the respondent to Kuala Lumpur but the respondent refused to accept the transfer, maintaining that under the letters of appointment and confirmation he was not liable to be transferred. The respondent's service was subsequently terminated by the appellant. Upon a complaint made, the Pegawai Buruh found in favour of the respondent and ordered the appellant to pay the respondent termination benefits and indemnity in lieu of notice. The appellant appealed to the High Court contending that the Pegawai Buruh had no jurisdiction under s 69 of the Employment Act 1965 ('the Act') to adjudicate on the respondent's dismissal on the grounds of misconduct.

Held, dismissing the appeal:

(1) A labour officer cannot hold an inquiry under s 69 and adjudicate whenever the question of the validity of the dismissal of an employee is in issue. He has no power to determine whether or not there has been any misconduct.

(2) However, the respondent's claim for indemnity in lieu of notice is under s 12(3)(e) of the Act. Under this section, the validity of dismissal is not in issue. The labour officer did not make any finding of misconduct. His finding was that the contract of service did not require the respondent to accept the transfer. Therefore the award of indemnity in lieu of notice is correct.

(3) In the respondent's claim for termination benefits under reg 4 of the Employment (Termination and Lay-Off Benefits) Regulations 1980, the validity of dismissal or misconduct is also not an issue. The labour officer had made no finding on misconduct.

Cases referred to

1 *Rajaretnam Palaniandy* v *Amalgamated Properties & Industries* [1988] 2 MLJ 363 (refd)
2 *Nylex (M) Sdn Bhd* v *Alias bin Chek* [1985] 1 CLJ 185 (refd)

Legislation referred to

Employment Act 1955 ss 12(3), 69
Employment (Termination and Lay-Off Benefits) Regulations 1980 reg 4

P Jayasingam for the appellant.
*Shyama Narayanan Nair (Ms)*for thhe respondent.

[*Editorial Note*: The appellant has appealed to the Supreme Court vide Civil Appeal No 02-18-89.]

Cur Adv Vult

Wan Adnan J: This is an appeal against the decision of Pegawai Buruh, Pulau Pinang.

The respondent was employed by the appellant as a confidential clerk at the appellant's branch office at No 19, Green Hall, Penang. The letter of appointment is exh C1 and the letter of confirmation is exh C2. The appellant wanted to transfer the respondent to Kuala Lumpur. The respondent maintained that the appellant could not transfer him as under the terms of the letter of appointment and confirmation he was not liable to be transferred. By letter dated 8 September 1988 (exh C10) his service was terminated by the appellant. Upon complaint made, the Pegawai Buruh found in favour of the respondent and ordered the appellant to pay the respondent the sum of $2,153.16 made up as follows:

(a) Indemnity in lieu of notice for six weeks	$ 889.00
(b) Underpayment of wages for August 1986	$ 100.00
(c) Termination benefits	$1,164.16
Total	$2,153.16

The only ground of appeal proceeded before me was the additional ground allowed by the order of this court on 13 July 1988 which is as follows:

> Further and/or in the alternative, having regard to s 69 of the Employment Act 1955, the Pegawai Buruh erred in law and acted in excess of and/or without jurisdiction in that he had no jurisdiction to determine or adjudicate on the respondent's dismissal which was on the ground of misconduct.

I was referred to the case of *Rajaretnam Palaniandy* v *Amalgamated Properties & Industries*[1] in which George Seah SCJ (as he then was) said referring to the judgment of Harun J (as he then was) in *Nylex (M) Sdn Bhd* v *Alias bin Chek*:[2]

> ...we are in agreement with him that s 69(1) of the Employment Act 1955 does not give any power to the director-general or labour officer of the Ministry of Labour to question the validity of the dismissal of any employee by his employer.

A labour officer cannot hold an inquiry under s 69 and adjudicate whenever the question of the validity of the dismissal of an employee is in issue. He has no power to determine whether or not there has been any misconduct.

The respondent's claim for indemnity in lieu of notice is under s 12(3)(e) which reads as follows:

> (3) Notwithstanding anything contained in subsection (2) where the termination of service of the employee is attributable wholly or mainly to the fact that –
>
> ...
>
> (e) the employee has refused to accept his transfer to any other place of employment, unless his contract of service requires him to accept such transfer; or
>
> ...
>
> the employee shall be entitled to and the employer shall give the employee notice of termination of service, and the length of such matter shall be not less than that provided under subsection (2)(a), (b) or (c) as the case may be, regardless of anything to the contrary contained in the contract of service.

Under this section the validity of dismissal is not in issue. The respondent's service was terminated because he refused to accept the transfer to another place. His contract of service did not require him to accept the transfer. There was no variation of his contract of service. He was appointed to the Penang branch. The labour officer did not make any finding of misconduct. The question of misconduct did not arise. His finding was that the contract of service did not require the respondent to accept the transfer. The respondent was entitled to six weeks notice under sub-s2(b). Therefore the award of $889 being an indemnity in lieu of notice is correct.

In the claim for termination benefits under reg 4 of the Employment (Termination and Lay-Off Benefits) Regulations 1980, validity of dismissal or misconduct is also not an issue. The labour officer had made no finding of misconduct. He merely said 'the complainant had refused a transfer because there was no provision in his contract of service on the matter of transfer. It should not be regarded as misconduct as stipulated in reg 4(1)(b).'

I find that the labour officer had the jurisdiction to hold the inquiry and to make the awards that he made. I therefore dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co; Bala Mahesan & Co.*

Reported by *Ng Sheau Jiuan*